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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

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No. 632.

JESSE CANTWELL, NEWTON CANTWELL AND RUSSELL CANTWELL,
Appellants;

JESSE CANTWELL,
Petitioner.
v.
THE STATE OF CONNECTICUT,
Respondent,

Appeal from and Certiorari to the Connecticut Supreme Court of Errors.

APPELLEE'S AND RESPONDENT'S BRIEF.

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INDEX.

Argument, Summary ..... pp. 4, 5

Argument, Proper:
Freedom of Speech, Press and Religion ..... pp. 6-18
Eighth Assignment of Error ..... pp. 18, 19
Conviction on Fifth Count ..... pp. 19-25

Opinion Below ..... p. 1

Statement of Case ..... pp. 1, 2, 3

Statute Involved, Sec. 6294 ..... p. 1

Statute Involved, Sec. 6194 ..... pp. 18, 19

CASES CITED.

Aetna Life Ins. Co. v. Dunken,
266 U. S. 389, 394 ..... p. 17

Bauserman v. Blut,
147 U. S. 627 ..... p. 19

Bachtel v. Wilson,
204 U. S. 36, 41 ..... p. 16

Beach v. Bradstreet,
85 Conn. 344 ..... p. 15

Commonwealth v. Plaisted,
148 Mass. 375 ..... pp. 9, 25

Connecticut Co. v. Norwalk,
89 Conn. 528, 531, 537, 542 ..... p. 11

C. I. O. v. Hague,
307 U. S. 496 ..... p. 13

PAG

Davis v. Burgess,
54 Mich. 514, 517; 20 N. W. 540 ..... p. 2

Delk v. Commonwealth,
166 Ky. 39, 45, 47; 178 S. W. 1129 ..... pp. 20, 2

Fairfield v. Gellanton,
100 U. S. 47 ..... p. 1

Faulkner v. State,
166 Ga. 645, 665; 114 S. E. 193 ..... p. 2

Hamilton v. Regents of Univ. of Calif.,
293 U. S. 245, 262 ..... p.

Henderson Bridge Co. v. Henderson City,
173 U. S. 592, 615 ..... p. 1

Herfoot v. Farmers & Merchants Bank,
218 U. S. 281, 288 ..... p. 1

Holmes v. State,
135 Ark. 187, 189; 204 S. W. 846 ..... p. 2

Lindsley v. Natural Carbonic Gas Co.,
220 U. S. 61, 78 ..... pp. 15, 16, 1

Louisville & Nashville R. R. v. Melton,
218 U. S. 36, 52, 53 ..... pp. 15, 1

Lovell v. City of Griffin,
303 U. S. 444 ..... pp. 12, 1

Magoun v. Ill. Tr. & Sav. Bank,
170 U. S. 294 ..... p. 1

Miedreich v. Lauenstein,
232 U. S. 236, 243 ..... p. 1

Moores v. Nat. Bank,
104 U. S. 625 ..... p. 1

PAGE

Orient Ins. Co. v. Doggs,
172 U. S. 557, 562 ..... p. 15

Ozan Lumber Co. v. Union County Bank,
207 U. S. 251, 256 ..... p. 16

Palmer v. Texas,
212 U. S. 118, 131 ..... p. 19

Rankin v. Emigh,
218 U. S. 27, 34 ..... p. 17

Reynolds v. U. S.,
98 U. S. 145 ..... pp. 9, 25

Royster Guano Co. v. Virginia,
253 U. S. 412, 415 ..... p. 15

Schneider v. State of New Jersey,
60 Sup. Ct. Rep. 146, 150 ..... pp. 8, 12, 13

State v. Farrall,
29 Conn. 72 ..... p. 20

State v. Lay,
86 Conn. 141 ..... p. 15

State v. Moser,
33 Ark. 140 ..... p. 20

State v. Muolo,
119 Conn. 323 ..... p. 15

State v. Shelby,
95 Minn. 65, 103 N. W. 725 ..... p. 20

Stutsman v. Wallace,
142 U. S. 293 ..... p. 19

State v. Warner,
34 Conn. 276, 279 ..... p. 20

PAGE

U. S. v. Munson,
213 U. S. 118 ..... p. 19

Waters-Pierce Oil Co. v. Texas,
212 U. S. 86, 107 ..... p. 17

West v. Commonwealth,
208 Ky. 735, 271 S. W. 1079 ..... p. 20

Whitney v. Cal.,
274 U. S. 357, 369 ..... p. 16

Woodmont Assn. v. Milford,
85 Conn. 517, 522 ..... p. 11

TEXT BOOKS CITED.

American Jurisprudence Vol. 8, p. 844 ..... p. 19

1 Bishop Criminal Law, (9th Ed.), Sec. 539 ..... pp. 19, 20

2 Brill Cyc. Criminal Law, p. 1523 ..... p. 19

Cooley Constitutional Limitations, 8th Ed. Vol. 2, pp.
886, 334, 371, 1223 ..... pp. 8, 15, 16

11 Corpus Juris Sec., p. 818 ..... p. 19

L. R. A. 1916 B, p. 1117 ..... p. 20

49 L. R. A. (N. S.), p. 919 ..... p. 20

8 R. C. L. Sec. 305, p. 284 ..... p. 19

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OCTOBER TERM, 1939.

JESSE CANTWELL, NEWTON CANTWELL AND RUSSELL CANTWELL, *Appellants*
JESSE CANTWELL, *Petitioner*
v.
THE STATE OF CONNECTICUT, *Respondent*

No. 632.

APPELLEE'S AND RESPONDENT'S BRIEF.

Reference to Official Report of Opinion Below.

The opinion delivered in the Supreme Court of Errors for the State of Connecticut is printed in 126 Connecticut 1, and also in the Record, page 97-102.

Statement of the Case.

Section 6294 of the General Statutes of the State of Connecticut as amended by Section 860d of the 1937 Supplement provides:

> UNLAWFUL SOLICITING FOR PHILANTHROPIC PURPOSES. No person shall solicit money, services, subscriptions or any valuable thing for any alleged religious, charitable or philanthropic cause, from other than a member of the organization for whose benefit such person is soliciting or within the

county in which such person or organization is located unless such cause shall have been approved by the *secretary of the public welfare council.* Upon application of any person in behalf of such cause, the secretary shall determine whether such cause is a religious one or is a bona fide object of charity or philanthropy and conforms to reasonable standards of efficiency and integrity, and, if he shall so find, shall approve the same and issue to the authority in charge a certificate to that effect. Such certificate may be revoked at any time. Any person violating any provision of this section shall be fined not more than one hundred dollars or imprisoned not more than thirty days or both.

I.

As to Third Count.

The Appellants, a father (Newton Cantwell) and his two minor sons (Jesse and Russell) aged sixteen and eighteen respectively, were arrested, charged, tried and convicted upon the third count of an information charging them with soliciting money for an alleged religious cause without securing the approval of the Secretary of the Public Welfare Council. The Finding shows that the Appellants were members of a religious organization known as Jehovah's Witnesses and they were identified by individual credentials bearing their names and signatures and attesting to the fact that hey were ordained ministers to preach the Gospel. In this capacity they called from house to house on Cassius Street, a public highway in the City of New Haven, carrying with them bags containing several books and pamphlets written in several different languages, a portable phonograph, and a set of phonograph records, which when played, introduced the books in their possession. Their manner of approach would be to ask permission to play the record and upon receiving it, would play the same and the record, when played, would refer to the contents of the book bearing its name.

The Appellants would then ask the prospects if they would buy the book and if not, they would accept any contribution that would be made. The Appellants after playing the record which contained a violent attack on the Catholic religion, asked the prospects if they would buy the book and if not they (Appellants) would accept any contribution they (the prospects) could make. If the prospect was not in a position to do this a pamphlet was left on condition that it would be read. None of the persons solicited were members of the religious organization known as Jehovah's Witnesses. Cassius Street is in a thickly settled neighborhood where about ninety per cent of the residents, including those approached by the Appellants, some two hundred to three hundred people, embrace the Catholic religion. The Appellants did not apply for, or obtain a certificate of approval as provided in the statute (R., p. 19, 20).

II.

As to Fifth Count.

Petitioner, Jesse Cantwell stopped John Ganley and John Cafferty on Cassius Street and receiving permission played the record "Enemies." After playing the record petitioner showed them the book "Enemies," stating that if they wanted to contribute toward the organization they could, or if they were firm believers, they could have the book for nothing. On hearing the record Ganley felt like hitting the accused and told him to take his bag and victrola and be on his way. If the accused remained he might have received physical violence. Cafferty's reaction was to throw the petitioner off the street physically and he warned petitioner that he (petitioner) had better get off the street before something happened to him. The record contained a violent attack on the Catholic religion and Ganley and Cafferty were loyal Catholics (R., p. 21).

ARGUMENT.

As to Third Count.

Summary:

It is the duty of a Court to sustain a legislative enactment unless its invalidity is demonstrated beyond a reasonable doubt.

One who assails a classification made in a legislative enactment carries the burden of showing that it does not rest upon any reasonable basis and is palpably arbitrary.

In passing upon the constitutionality of a statute it must be borne in mind that a large discretion is necessarily vested in the State Legislature to determine not only what the interest of public convenience and welfare require, but what measures are necessary to secure such interests.

In declaring a law unconstitutional a Court must necessarily cover the same ground already covered by the Legislative Department in deciding upon the propriety of enacting a law, and must indirectly overrule the decision of the Legislative Department. The task is, therefore, a delicate one and only to be entered upon with reluctance and hesitation.

The Statute being general in its application, embracing all persons under substantially like circumstances, and not being an arbitrary exercise of power, does not deny to petitioners equal protection of the law, nor violate any other provisions of the Constitution of the United States.

The action of the Legislature in passing said statute was within the police power of the State and should be upheld.

The State may protect its citizens against fraudulent solicitation and when it enacts a statute to do so, all persons are required to abide thereby.

The full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine is not interfered with by a statute seeking to regulate

solicitations for funds, where the only solicitation sought to be prohibited is solicitation for fraudulent purposes and no tests or limitations of religious belief, practice or teachings are imposed.

The safeguards of the Fourteenth Amendment against State action interfering with the freedom of speech, press or the exercise of religion are not to be construed as prohibiting regulation of the exercise of said rights when necessary to protect the public interest.

The task of the Court is to weigh the circumstances surrounding the legislative enactments, and to appraise the substantiality of the reasons advanced in the support of the regulation which may affect the enjoyment of the rights of free speech, and of the press and of religious worship.

The construction and interpretation of the statute adopted by the Supreme Court of the State of Connecticut is binding and will be accepted by this Court.

The fact Findings of the Court below are conclusive and resort may not be had by this Court to the printed evidence.

The classification of religious, charitable or philanthropic causes as a group is a reasonable one and not arbitrary. The exemption from the provisions of the statute of soliciting from members of the organization for whose benefit the soliciting is done within the county where the person or organization is located, is not a discrimination against persons or organizations included within the provisions of the statute, but is a limitation having a reasonable basis.

The statute does not permit censorship of any ideas or teachings sought to be disseminated, but simply provides for determination as to whether the cause sought to be benefited is a religious one, or is a bona fide object of charity or philanthropy, and conforms to reasonable standards of efficiency and integrity.

The fact that Appellants in their own minds justified vio-

lation of the statute because of their religious convictions does not establish any legal justification for their conduct nor does the claimed conflict between the statute and their religious convictions render the statute unconstitutional.

The 5th and 6th Assignments of Error urged upon this Court cannot now be successfully asserted because the Supreme Court of Errors, acted under the Rules and Practice of the State of Connecticut, and in accordance with a definitely established principle, the Supreme Court of the United States cannot now search the record.

The claim that the evidence was not sufficient to bring them within the statute, is not now open to consideration in view of the abandonment of attack upon the Finding in the Supreme Court of Errors of Connecticut.

As to Fifth Count.

The conviction of petitioner on the fifth count was legal because the contents of the phonograph record and books were such as are not shielded by the right of free speech, worship or press.

Argument Proper.

The question before this Court is: Did the State of Connecticut, in legislating, by Section 6294 of the General Statutes as amended, that a religious organization should not solicit funds, except among its own members, and in the county within which it or the person soliciting was located, without a certificate of approval, enact a valid law within the proper exercise of the police power of the State? The Appellants claim it did not, and the statute is void and unconstitutional because:

1. It unlawfully abridges and denies Appellants freedom to worship.

2. It abridges the right of free speech.
3. It abridges the right of free press.
4. It deprives petitioners of liberty without due process of law.
5. It denies petitioners the equal protection of the laws.

Section 6294 of the General Statutes of the State of Connecticut, Revision of 1930, as amended by Section 860d of the Cumulative Supplement to the General Statutes of 1937, is entitled "Unlawful solicitation for philanthropic purposes," and forms a part of Chapter 330 entitled "Offences against Public Policy." This section was originally enacted as Chapter 409 of the Public Acts of the State of Connecticut of 1917. Said statute remains unaltered since the date of its enactment except for the designation or title of the official to issue the permit, made necessary by changes in the designation and title of the administrative agency for public welfare, formerly known as the State Board of Charities, later designated as the Welfare Board, and by the amendments of 1937 as the Public Welfare Council. The title of the section and the title of the chapter re-inforces the obvious intent and purpose of this statute as being one primarily designed to protect the public from the perpetration of fraud in the solicitation of money or other valuable things under the guise or cloak of religion, charity, or philanthropy. By the express terms of the statute the only activity of any alleged religious, charitable or philanthropic body, or person engaged in the furtherance of the work of such a body, that is attempted to be regulated is the solicitation of contributions of money or other valuable thing.

It is conceded that if freedom of speech and of the press, secured by the First Amendment to the Constitution of the United

States is abridged by this statute, the statute would be in contravention of the 14th amendment. (*Schneider v. State of New Jersey*, 60 Sup. Ct. 146, 150.) However, the statute neither expressly nor by implication impugns in any way those rights commonly regarded as freedom of speech.

> "The constitutional liberty of speech and of the press, as we understand it, implies a right to freely utter and publish whatever the citizen may please, and to be protected against any responsibility for so doing, except so far as such publications, from their blasphemy, obscenity, or scandalous character, may be a public offense, or as to their falsehood and malice they may injuriously affect the standing, reputation or pecuniary interests of individuals. Or, to state the same thing in somewhat different words, we understand liberty of speech and of the press to imply not only liberty to publish, but complete immunity from legal censure and punishment for the publication, so long as it is not harmful in its character, when tested by such standards as the law affords. For these standards we must look to the common-law rules which were in force when the constitutional guaranties were established, and in reference to which they have been adopted."
>
> Cooley's Constitutional Limitations, 8th Ed., vol. 2, p. 886.

The "liberty" of worship undoubtedly includes the right to entertain the beliefs, to adhere to the principles, and to teach the doctrines to which the Appellants adhere.

> Hamilton v. Regents of the University of Calif., 293 U. S., 245 p. 262.

In the instant case it is difficult to see wherein the application of this statute might in any way interfere with the freedom of these Appellants to worship as they see fit. In no way does this statute attempt to limit or define the Appellants' mode of worship or restrict or attempt to restrict their teachings or doctrine. The

fact that the Appellants may believe as an article of their religious faith that this law was in contravention of their own religious belief furnishes no sound legal or constitutional basis for their violation of it.

Commonwealth v. Plaisted, 148 Mass. 375.
Reynolds v. U. S., 98 U. S. 145.

The Appellants further complain that the statute as construed and applied to them infringes upon the freedom of the press. They base this claim on the ground that as part of their religious belief it is a duty devolving upon them to distribute certain printed matter to the public. Undoubtedly their activity in disseminating literature is protected by the so-called "freedom of the press." While the dissemination of this literature may be their fundamental purpose, still it in no wise is the basis upon which the Supreme Court of Errors of Connecticut sustained their conviction in the lower Court. The activity of the Appellants complained of, and which violated the statute in the instant case, was their solicitation of funds at the time that they distributed this literature. The statute in question restricts in no way the distribution of pamphlets and literature, nor if the activity of these itinerant disseminators of literature was limited to merely receiving contributions from those who might be inclined to donate to them without solicitation, their activities would not come within the purview of the statute. The offenses complained of against these Appellants is that of soliciting funds. Whether this solicitation was their primary purpose, or merely incidental to the spread of the Gospel in accordance with their views, is not the controlling point. As was said by the Connecticut Supreme Court in its opinion:

> "As already indicated, and as is plain from its terms, Section 6294 does not apply, and is not sought to be applied in this case, to the dissemination, neither by sale or free distribution, of printed matter by the

defendants. As the defendants recognize in their brief, the purpose of the statute is to protect the public against imposition in the matter of solicitations of funds purportedly for religious, charitable, or philanthropic causes. This is not, and is not claimed to be, objectionable on constitutional grounds. It is such solicitation which brings the defendants within the statute, not their other and apparently predominate activities in the dissemination of literature. For this reason there is not, as claimed, the constitutional objection which was found as to the application to members of this same organization of ordinances involved in *Lovell v. City of Griffin*, 303 U. S., 444, 58 Sup. Ct., 666, and *Cincinnati v. Mosier*, 14 Ohio Opinions 134, the first of which prohibited the distribution of literature of any kind, whether delivered free or sold, without a permit from the city manager, and the second required a license for peddlers selling goods carried by hand."

The "due process" guaranteed by the 14th Amendment to the United States Constitution is not denied or abridged by the statute in question. As heretofore pointed out, the sole purpose and object of this statute is to prevent the perpetration of fraud on the public in the solicitation of funds for an alleged religious, charitable or philanthropic cause. Under the provisions of the statute the process is established whereby a permit may be obtained. Definite standards to guide the Secretary of the Welfare Council in the issuance of those permits is provided and it is no objection to the constitutionality of the statute that some discretion is vested in the administrative officer to determine whether or not a given cause is religious, charitable or philanthropic. Furthermore, in the event that the discretion of the administrative officer were abused and he acted in an arbitrary or unreasonable manner, his activity would be subject to judicial review. The words religious, charitable and philanthropic all have a well understood and a well defined meaning, and nothing in the statute purports to indicate that they are used otherwise than in their ordinary broad, signifi-

cance. There is no attempt to limit or restrict the meaning of the word religious or religion.

This statute can not be attacked on the grounds that it denies due process of law in that discretion is vested in an administrative officer, namely, the Secretary of the Welfare Council to issue the permit. It is a proper exercise of the legislative function to enact a police regulation of the character in question, and the Legislature could delegate to an administrative officer the power to exercise its will and carry out its policy in accordance with the expression of the legislative will contained in the statute.

> Connecticut Company v. Norwalk, 89 Conn., 528-531.

The exercise of discretion by the Secretary of the Public Welfare Council would not necessarily be final and conclusive on the person applying for a permit. "If an administrative order be so unreasonable as to justify judicial interference, it is within our judicial power, on proper appeal, to set it aside."

> Norwalk v. Connecticut Company, 89 Conn., 537 at 542.

Nor does the fact that the statute in the instant case fails to incorporate a statutory proceeding for appeal from a decision of the Secretary of the Public Welfare Council prevent recourse to the Courts to pass upon the reasonableness of any action that he might take.

> "The action or non-action of administrative boards may become the subject of judicial inquiry or review whenever it is claimed, among other conditions, that it works material damage to individual or corporate rights or invades or threatens such rights, or is so unreasonable as to justify judicial intervention, or is not consonant with justice, or that a legal duty has not been performed."

> Woodmont Assoc. v. Milford, 85 Conn. 517, 522.

The claim is made in the Appellants' brief that the statute here in question as construed and applied is essentially the same as the ordinance involved in the case of *Schneider v. State of New Jersey, (Town of Irvington)*; 60 Supreme Court Reporter 146, and *Lovell v. City of Griffin*, 303 U. S., 444.

It is respectfully submitted that the case of *Schneider v. State of New Jersey (Town of Irvington)* is not similar to the instant case, nor is the ordinance therein ruled upon similar to the statute under consideration here, because that ordinance provided that no person should canvass, solicit (for any purpose), distribute circulars or other matter or call from house to house without first having received a written permit so to do. The Connecticut statute under consideration makes no mention of canvassing, distributing circulars or other matter, or calling from house to house, and only limits the right to solicit when the solicitation is made for money or other valuable thing for a religious, charitable or philanthropic cause or organization. An examination of the two regulations, therefore, at once establishes the very limited scope of the Connecticut statute, and because it is obviously solely designed and intended to prevent the citizens of Connecticut from being imposed upon by fraudulent appeals in the name of religion, charity and philanthropy, it is a valid exercise of the police power of the State. The New Jersey ordinance clearly does not fall within that category. It must be admitted that the opportunity to use religious pretensions to cover up fraudulent schemes of the grossest nature is ever present and is an evil from which the public, under the police power of the State, should be protected.

Unlike the ordinance discussed in the Schneider case the present statute does not seek to place any restriction upon a communication of any views or the advocacy of any cause, nor to set up any power of censorship in a police officer to determine what literature may be distributed or ideas communicated or who may distribute it.

Unlike the ordinance discussed in the Schneider case, *supra*, or the ordinance considered in *C.I.O. v. Hague*, 307 U. S. 496, the statute here in question in no way, shape or manner attempts to set up a previous administrative censorship of the exercise of right of speech and assembly, or upon the dissemination of literature.

The ordinance passed upon in *Lovell v. The City of Griffin supra* forbade the distribution by hand or otherwise of literature *of any kind* without written permission from the City Manager. Clearly a simple reading of this ordinance indicates the difference between it and the Connecticut statute.

On page 19 of the Appellant's brief the following appears:

> "This Court will notice from the evidence and will take judicial notice of the fact that the mode or manner of worship or service of Almighty God by Jehovah's Witnesses include, among other things, the activity of going from door to door and leaving at the homes of the people choosing to accept books explaining the bible and informing them about God's kingdom as being the only hope of the people and about the snare of religion. In doing this work, which the Court below recognizes and finds is the predominant part of the petitioners' work and, *incidental thereto*, they receive from some persons contributions of money tendered at the time of accepting the printed message, which contributions Jehovah's Witnesses (including petitioners) use toward defraying the cost of printing and distributing more of like literature thus is defrayed, in part, the expense of disseminating this printed message throughout the entire world. The deficits are taken care of from other funds voluntarily contributed by Jehovah's Witnesses and others interested. It can thus be seen that the statute in question ON ITS FACE prohibits the work of petitioners and Jehovah's Witnesses."

A reading of the statute will clearly disclose that any of the activities described in the above quotation are not affected in any way by the statutory provisions. The only subject to which the

statute relates is the *solicitation* for religious purposes. In other words, if all the Appellants did in the present case was as outlined in the above quotation then there would have been no conviction in the lower Court under Section 6294, as amended, because there would have been no solicitation of funds.

The restriction placed upon the class of persons who must apply for a permit is reasonably designed to effectuate the purpose for which the statute is enacted, to wit: the prevention of fraud. The statute permits solicitation of funds within the county wherein the solicitor or the organization for which he is soliciting is located, without a certificate. It is natural to suppose that if a person approached was a member of an organization within his county he would be familiar with or would have some familiarity or means of ascertaining the integrity of the organization or the person soliciting. On the other hand, if the organization or person soliciting were not located within the county, the persons solicited might have little or no means of ascertaining whether the solicitation was free from fraud, or that the cause was a bona fide one.

There are but eight counties in the State of Connecticut, all of approximately equal size. There are no cities or towns which do not lie wholly within the borders of one county. With this geographical set-up the use of county lines as boundaries for solicitation without a certificate of approval is a reasonable one since it does not create such a small area that it would be natural to expect the residents of the area to be familiar with persons or organizations of another.

> "The police power of a State, in a comprehensive sense, embraces its whole system of internal regulation, by which the State seeks not only to preserve the public order and to prevent offenses against the State, but also to establish for the intercourse of citizens with citizens those rules of good manners and good neighborhood

which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own so far as is reasonably consistent with a like enjoyment of rights by others."

Cooley's "Constitutional Limitations" Eighth Edition p. 1223.

In passing upon the constitutionality of a statute it must be borne in mind that a large discretion is necessarily vested in the State Legislature to determine not only what the interests of public convenience and welfare require, but what measures are necessary to secure such interests.

Cooley's "Constitutional Limitations" 8th Ed. p. 334.
Louisville & Nashville R. R. v. Melton, 218 U. S. 52; 53.
Magoun v. Ill. Tr. & Sav. Bk., 170 U. S. 294.
Orient Ins. Co. v. Doggs, 172 U. S. 557, 562.
Royster Guano Co. v. Virginia, 253 U. S. 412, 415.

It is the duty of a Court in the exercise of great care and caution to make every presumption and intendment in favor of the validity of a statute and sustain a legislative enactment unless its invalidity is demonstrated beyond a reasonable doubt.

Beach v. Bradstreet, 85 Conn. 344.
State v. Lay, 86 Conn. 141.
State v. Muolo, 119 Conn. 323.
Lindsley v. Natural Carbonic Gas Co., 200 U. S. 61, 78.

In declaring a law unconstitutional, a Court must necessarily cover the same ground which has already been covered by the legislative department in deciding upon the propriety of enacting the law, and they must indirectly overrule the decision of that

co-ordinate department. The task is therefore a delicate one and only to be entered upon with reluctance and hesitation.

Cooley's "Constitutional Limitations" 8th Ed. p. 334, 371.

The rules by which the contention that the classification made by a statute must be tested are:

(1) The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard; and avoids what is done only when it is without any reasonable basis and, therefore, is purely arbitrary.

(2) A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.

(3) When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.

(4) One who assails the classification made in a legislative enactment carries the burden of showing that it does not rest upon any reasonable basis and is palpably arbitrary.

Bachtel v. Wilson, 204 U. S. 36, 41.

Louisville & Nashville R. R. Co. v. Melton, 218 U. S. 36.

Ozan Lumber Co. v. Union County Bank, 207 U. S. 251, 256.

Munn v. Illinois, 94 U. S. 113, 132.

Henderson Bridge Co. v. Henderson City, 173 U. S. 592, 615.

Lindsley v. Natural Carbonic Gas Co., 220 U. S. 78, 79.

Whitney v. California, 274 U. S. 357, 369.

The Appellants can not now resort to the evidence in pursuing Assignment of Error No. 5, but are bound by the finding of facts of the trial Court because, before the Supreme Court of Errors of Connecticut, all assignments of error which sought corrections or additions to the findings of fact of the trial Court were abandoned.

Under the procedural rules of Connecticut practice as set forth in the Connecticut Practice Book the appeal, therefore, must be decided on the facts as found in the finding without resort to the evidence.

As pointed out by the opinion of the Court below:

> "Assignments of error pertaining to correction of the finding having been abandoned, this appeal is to be determined upon the facts as found, without the resort to the evidence which is invited in brief and argument." (R., p. 98).

This Court has repeatedly held that in cases coming to it from the Supreme Court of a State it accepts as binding the findings upon issues of fact duly made in that court.

> Waters-Pierce Oil Co. v. Texas, 212 U. S. 86, 107.
> Rankin v. Emigh, 218 U. S. 27, 34.
> Herfoot v. Farmers & Merchants Bank, 218 U. S. 281, 288.
> Miedreich v. Lauenstein, 232 U. S. 236, 243.
> Aetna Life Ins. Co. v. Dunken, 266 U. S. 389, 394.

It is submitted that the instant case comes within the general rule and does fall within either of the exceptions which are where a Federal right has been denied as a result of a finding shown by the record to be without evidence to support it, and where the findings of fact are so intermingled with a conclusion of law as to a Federal right as to make it necessary, in order to pass upon the Federal question, to analyze the facts.

Aetna Life Ins. Co. v. Dunken *supra.*

Assignment of Error No. 6 claims error because the Supreme Court of Errors of Connecticut "erred in ruling that the taking of money by appellants at the time of delivering to some persons, printed literature, was solicitation."

No such ruling was made by the Court below. In fact there is no finding of fact to that effect. The finding clearly shows solicitation on the part of the Appellants which is the evil protected against by the statute.

For the foregoing reasons, it is respectfully submitted that the conviction on the third count of the information should be sustained.

II.

There Is No Basis For the Petitioner's Eighth Assignment of Error.

The third point urged in the Petitioner Jesse Cantwell's brief questions the validity of Section 6194 of the General Statutes of Connecticut.

It is submitted that this statute is in no way involved in the instant case as there was no conviction of the petitioner thereunder.

The Petitioner was convicted on the fifth count of the information (R., p. 2) and from a reading of that count it appears that the offense charged was common law breach of peace.

The opinion of the Connecticut Supreme Court is also illuminating on this feature of the case and reads as follows:

> "The fifth count charges a breach of peace by acts which are within the common law definition of that offense. . . . Section 6194 of the General Statutes does not define the crime known as breach of the peace, but merely specifies certain ways of committing it. It may be committed in ways other than those so specified." (R., p. 99, 100).

The Courts of the several states have the right to construe their own statutes. This is a function to be exercised exclusively by them, and their judgment upon such matters is conclusive upon all Federal Tribunals.

Lindsley v. Natural Carbonic Gas Co. *supra.*
Palmer v. Texas, 212 U. S. 118, 131.
U. S. v. Munson, 213 U. S. 118.
Stutsman v. Wallace, 142 U. S. 293.
Moores v. National Bank, 104 U. S. 625.
Bauserman v. Blut, 147 U. S. 627.
Fairfield v. Gellanton, 100 U. S. 47.

III.

Conviction of Petitioner, Jesse Cantwell, Under Fifth Count of Information Was Legal and Should Be Upheld.

Petitioner, Jesse Cantwell, was convicted on the fifth count which charged the offense of a common law breach of peace.

The Finding of the trial Court includes the following pertinent facts: Jesse Cantwell stopped John Ganley and John Cafferty, both of whom were Catholics, and receiving permission, played the phonograph record "Enemies" which violently attacked that religion and church and showed Ganley and Cafferty a copy of the book "Enemies." On hearing the record, Ganley felt like hitting Cantwell and told him to take his bag and victrola and be on his way. If he had remained he might have received physical violence. Cafferty's mental reaction was to put Jesse off the street and he warned him that he had better get off before something happened to him.

These acts and this conduct on the part of the Petitioner are within the common-law-definition of breach of peace. (R., p. 21.)

11 C. J. S., p. 818.
2 Brill Cyclopedia of Criminal Law, p. 1523.
8 Am. Jur., p. 844.
8 R. C. L. Section 305, p. 284.
1 Bishop Criminal Law (9th Ed.), Section 539.

It is not necessary to show that other persons were actually provoked to the point of violence or disturbance of the peace.

1 Bishop Criminal Law (9th Ed.), Section 539.
State v. Farrall, 29 Conn. 72.
State v. Warner, 34 Conn. 276, 279.
Davis v. Burgess, 54 Mich. 514, 517; 20 N. W. 540.
Delk v. Commonwealth, 166 Ky. 39, 45; 178 S. W. 1129.
L. R. A., 1916B, 1417.

Nor is a specific intent to provoke a breach of peace essential; it is sufficient if the acts are such as tend to produce it.

State v. Shelby, 95 Minn. 65; 103 N. W. 725.

The doing of acts or the use of language which, under circumstances of which the person is or should be aware, are calculated or likely to provoke another person or other persons to acts of immediate violence may constitute a breach of the peace.

49 L. R. A., (N. S.) 919.
Holmes v. State, 135 Ark. 187, 189; 204 S. W. 846.
Faulkner v. State, 166 Ga. 645, 665; 144 S. E. 193.

The rule is as applicable where, instead of being directly spoken, the objectionable language is communicated, as here, by means of a victrola operated by the person accused (Petitioner) or by banner or placard as in *West v. Commonwealth*, 208 Ky. 735; 271 S. W. 1079.

The effect or tendency of words or conduct depends largely upon the circumstances and is a question of fact.

State v. Moser, 33 Ark. 140.

It is apparent from the facts found that the playing for audition by loyal Catholics of a record violently attacking their reli-

gion and church could well be found to constitute the offense charged and to find Petitioner, Jesse Cantwell, guilty.

While the right to propagate religious views is not to be denied, one will not be permitted to commit a breach of peace under the guise of preaching the Gospel.

> Delk v. Commonwealth, 166 Ky. 39, 47; 178 S. W. 1129.

The record played by the Petitioner, Jesse Cantwell, contained the following:

> "The most seductive and subtle instrument employed to deceive man is religion, because religion has the appearance of doing good, whereas it brings upon the people great evil. There are many different religions, all of which are deceptive, *are the instruments of the enemy Satan*, and all work to the injury of men. This book submits the conclusive proof that for more than fifteen hundred years a great religious system, operating out of Rome, has by means of *fraud* and *deception* brought untold sorrow and suffering upon the people. *It operates the greatest racket ever employed amongst men and robs the people of their money and destroys their peace of mind and freedom of action.* That religious system is vigorously pushing its *political schemes* amongst all the nations of earth, with the avowed purpose of seizing control of the nations and *ruling the people by cruel dictators.* Some of the nations have fallen under that *wicked power*, and all nations are now greatly endangered. Because of the increasing power of the enemy the liberties of the people are rapidly passing away and all nations are rushing into infidelity and into ultimate destruction." (R., p. 41).

The Petitioner likewise showed Ganley and Cafferty the book "Enemies" (R., p. 21).

This book contained the following on pages 198 and 199:

> "All organizations on the earth that are in opposition to God and his kingdom, therefore, necessarily take the name of '*Babylon*' *and* '*harlot*,' *and those names specif-*

ically apply to the leading religious organization, the Roman Catholic church, which claims to be the mother of the so-called Christian religion. That mighty religious organization, foretold in the Scriptures, *uses the method of harlots to induce politicians and commercial traffickers* and others to fall into her arms and yield to her supposed charms. In the Scriptures this organization is likened unto a 'strange woman, which flattereth with her words,' and *which entices the credulous persons that are void of understanding to yield to her influence.* In the prophecies the harlot of religious organization is pictured as bedecking herself in gaudy and showy clothes, peculiar hats, lace, and silk shirts and other gaudy apparel, and she is represented as sauntering forth and indulging in singing seductive songs to inveigle others into her trap, that she might have personal adulation and praise of men and at the same time reap also pecuniary gain." (R., p. 48, 49).

and on page 288:

"Note this part of the prophecy says: *'And shall commit fornication with all the kingdoms of the world upon the face of the earth'*; according to the Revised Version: *'Shall play the harlot with all the kingdoms of the world.' Such is exactly what the Roman Catholic Hierarchy organization is doing and has been doing from and after 1918 and will continue to do until the beginning of Armageddon*; and while she is doing that Jehovah is doing his 'strange work' of exposing her wickedness. *The activity of the old whore in committing harlotry with all the kingdoms of the world appears* to be more than merely establishing diplomatic relationship with all nations and being recognized as a temporal power. It surely means the carrying out of the objective of the Roman Catholic Hierarchy *to set up a Fascist government controlling the nations of the earth*, that the Hierarchy may arbitrarily rule the nations in a dictatorial manner." (R., p. 49).

and on page 292:

"The prophecy of the Lord shows that modern Tyre, the Catholic organization, *commits fornication with all the nations and gains her desire.* When the Hierarchy

has gained complete temporal power of the earth, that will in her mind fully establish the conclusion that her desire has been fully accomplished, and then she will say, 'Peace and safety'; and then the 'ten horns,' that is, all the ruling powers of the nations, 'receive power with the beast,' the League of Nations combine being in fact a league of Fascism or combined Fascist government dominated by the Roman Catholic Hierarchy. 'And the woman (Devil's visible religious organization, the harlot) which thou sawest is that great city (the Hierarchy organization), which reigneth over (combined Fascism) the kings of the earth.'" (R., p. 49).

and on page 295:

"The Roman Catholic Hierarchy with an air of superiority, and with great claim of power and authority from God, have approached the kings of the earth and said to them, in effect: 'We bestow upon you the divine right to rule. We give you holy sanctions and heavenly blessings, and by reason thereof your positions as political rulers are sacred and are ordained of God, and therefore so far as the people are concerned, you are viewed as constituting the "higher powers"; and we who compose the Hierarchy are the spiritual "higher powers" and superior to all other earthly power.' The true higher powers are Jehovah and Christ Jesus. The claim that earthly organizations are the higher powers is therefore false. *In this fraudulent representation and claim made by the Roman Catholic Hierarchy the harlot proceeds to gain control over millions of gullible men.* Such constitutes the 'merchandise' and 'hire' of the harlot by which she draws men into her clutches. *The Roman Catholic Hierarchy has fraudulently posed as the representative of God with full divine authority to bestow blessings on kings, while in truth and in fact she is the representative of the Devil. The Hierarchy uses 'the hire of the harlot' to induce the political powers to believe that she should dictate the policy of the world, and thus carry out her purpose to set up a dictatorial rule of the earth.*" (R., p. 50).

and on page 301:

"Fascism and Naziism mean one and the same thing and are the instrument of the Roman Catholic Hier-

archy, the child of the Devil, to gain control of the earth by the Hierarchy and turn all people against God and his kingdom. The Roman Catholic Hierarchy classes every one that is opposed to her as 'red' or 'communist' and this is done to incite the people against those who stand for whatsoever is right." (R., p. 50).

and on pages 328-329:

"*The chief visible enemy of God, and therefore the greatest and worst public enemy, is the Roman Catholic religious organization. For centuries that organization scornfully and arrogantly has ridden upon the backs of the peoples and nations and robbed the people of their just earnings.* The day of that *wicked* institution must come to an end. That organization, that is to say, the Roman Catholic 'Hierarchy of Jurisdiction,' for years has boastfully said and still says: 'The gates of hell shall not prevail against (us).' These words of Jesus Christ concerning his own organization, which is the habitation of Almighty God, are misapplied by the Roman Catholic Hierarchy; and this is further evidence of the presumptuous sin of that religious organization." (R., p. 51).

and on page 330:

"It is the Roman Catholic 'Hierarchy of Jurisdiction' that has *falsely* and *fraudulently* assumed to shepherd the Catholic population and *rob them and fleece them.* Claiming to be shepherds, *they have really been wolves; and to that wicked crowd Jehovah says: 'Howl, ye shepherds, and cry and wallow yourselves in the ashes, ye principal of the flock, for the days of your slaughter* and of your dispersions are accomplished, and ye shall fall like a pleasant vessel'."

"*The Roman Catholic 'Hierarchy of Jurisdiction,' the religious system, is hypocritical in the extreme, and God hates a hypocrite, a racketeer, and a liar, all of which that gang is.*" (R., p. 51).

No question is raised that the petitioner did not have the right to preach his beliefs and distribute books and pamphlets in furtherance of his belief and teachings, but it is respectfully sub-

mitted that the foregoing passages contain obscene, and blasphemous language and statements of a scandalous character, defamatory and libellous, such as are not permitted or shielded by the right of free speech, and are included in the limitations placed on such right.

Acts and conduct, in violation of social duties, subversive of good order and contrary to the law of the land are not beyond the reach of statutory enactments simply because the offender claims the course of conduct was dictated by his religious belief.

Reynolds v. United States, 98 U. S. 145.
Commonwealth v. Plaisted, 148 Mass. 375.

Clearly, therefore, the conviction of the petitioner on the fifth count of the information was proper and legal and should be upheld.

Respectfully Submitted,

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P 7.

SUPREME COURT OF THE UNITED STATES.

No. 632.—October Term, 1939.

Jesse Cantwell, Newton Cantwell and Russell Cantwell, Appellants, *vs.* The State of Connecticut.	On Appeal from and Certiorari to the Supreme Court of Errors of the State of Connecticut.

[May 20, 1940.]

Mr. Justice Roberts delivered the opinion of the Court.

Newton Cantwell and his two sons, Jesse and Russell, members of a group known as Jehovah's witnesses, and claiming to be ordained ministers, were arrested in New Haven, Connecticut, and each was charged by information in five counts, with statutory and common law offenses. After trial in the Court of Common Pleas of New Haven County each of them was convicted on the third count, which charged a violation of § 6294 of the General Statutes of Connecticut,[1] and on the fifth count, which charged commission of the common law offense of inciting a breach of the peace. On appeal to the Supreme Court the conviction of all three on the third count was affirmed. The conviction of Jesse Cantwell, on the fifth count, was also affirmed, but the conviction of Newton and Russell on that count was reversed and a new trial ordered as to them.[2]

By demurrers to the information, by requests for rulings of law at the trial, and by their assignments of error in the State Supreme Court, the appellants pressed the contention that the statute under which the third count was drawn was offensive to the due process clause of the Fourteenth Amendment because, on its face and as construed and applied, it denied them freedom of speech and prohibited their free exercise of religion. In like manner they made the point that they could not be found guilty on the fifth count, without violation of the Amendment.

[1] General Statutes § 6294 as amended by § 860d of the 1937 supplement.
[2] — Conn. —; 8 A. (2d) 533.

We have jurisdiction on appeal from the judgments on the third count, as there was drawn in question the validity of a state statute under the federal Constitution, and the decision was in favor of validity. Since the conviction on the fifth count was not based upon a statute, but presents a substantial question under the federal Constitution, we granted the writ of certiorari in respect of it.

The facts adduced to sustain the convictions on the third count follow. On the day of their arrest the appellants were engaged in going singly from house to house on Cassius Street in New Haven. They were individually equipped with a bag containing books and pamphlets on religious subjects, a portable phonograph and a set of records, each of which, when played, introduced, and was a description of, one of the books. Each appellant asked the person who responded to his call for permission to play one of the records. If permission was granted he asked the person to buy the book described and, upon refusal, he solicited such contribution towards the publication of the pamphlets as the listener was willing to make. If a contribution was received a pamphlet was delivered upon condition that it would be read.

Cassius Street is in a thickly populated neighborhood, where about ninety per cent of the residents are Roman Catholics. A phonograph record, describing a book entitled "Enemies", included an attack on the Catholic religion. None of the persons interviewed were members of Jehovah's witnesses.

The statute under which the appellants were charged provides:

"No person shall solicit money, services, subscriptions or any valuable thing for any alleged religious, charitable or philanthropic cause, from other than a member of the organization for whose benefit such person is soliciting or within the county in which such person or organization is located unless such cause shall have been approved by the secretary of the public welfare council. Upon application of any person in behalf of such cause, the secretary shall determine whether such cause is a religious one or is a bona fide object of charity or philanthropy and conforms to reasonable standards of efficiency and integrity, and, if he shall so find, shall approve the same and issue to the authority in charge a certificate to that effect. Such certificate may be revoked at any time. Any person violating any provision of this section shall be fined not more than one hundred dollars or imprisoned not more than thirty days or both."

The appellants claimed that their activities were not within the statute but consisted only of distribution of books, pamphlets, and periodicals. The State Supreme Court construed the finding of the trial court to be that "in addition to the sale of the books and the distribution of the pamphlets the defendants were also soliciting contributions or donations of money for an alleged religious cause, and thereby came within the purview of the statute." It overruled the contention that the Act, as applied to the appellants, offends the due process clause of the Fourteenth Amendment, because it abridges or denies religious freedom and liberty of speech and press. The court stated that it was the solicitation that brought the appellants within the sweep of the Act and not their other activities in the dissemination of literature. It declared the legislation constitutional as an effort by the State to protect the public against fraud and imposition in the solicitation of funds for what purported to be religious, charitable, or philanthropic causes.

The facts which were held to support the conviction of Jesse Cantwell on the fifth count were that he stopped two men in the street, asked, and received, permission to play a phonograph record, and played the record "Enemies", which attacked the religion and church of the two men, who were Catholics. Both were incensed by the contents of the record and were tempted to strike Cantwell unless he went away. On being told to be on his way he left their presence. There was no evidence that he was personally offensive or entered into any argument with those he interviewed.

The court held that the charge was not assault or breach of the peace or threats on Cantwell's part, but invoking or inciting others to breach of the peace, and that the facts supported the conviction of that offense.

First. We hold that the statute, as construed and applied to the appellants, deprives them of their liberty without due process of law in contravention of the Fourteenth Amendment. The fundamental concept of liberty embodied in that Amendment embraces the liberties guaranteed by the First Amendment.[3] The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws. The consti-

[3] Schneider v. State, 308 U. S. 147, 160.

tutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.[4] The freedom to act must have appropriate definition to preserve the enforcement of that protection. In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom. No one would contest the proposition that a state may not, by statute, wholly deny the right to preach or to disseminate religious views. Plainly such a previous and absolute restraint would violate the terms of the guarantee.[5] It is equally clear that a state may by general and non-discriminatory legislation regulate the times, the places, and the manner of soliciting upon its streets, and of holding meetings thereon; and may in other respects safeguard the peace, good order and comfort of the community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment. The appellants are right in their insistence that the Act in question is not such a regulation. If a certificate is procured, solicitation is permitted without restraint but, in the absence of a certificate, solicitation is altogether prohibited.

The appellants urge that to require them to obtain a certificate as a condition of soliciting support for their views amounts to a prior restraint on the exercise of their religion within the meaning of the Constitution. The State insists that the Act, as construed by the Supreme Court of Connecticut, imposes no previous restraint upon the dissemination of religious views or teaching but merely safeguards against the perpetration of frauds under the cloak of religion. Conceding that this is so, the question remains whether the method adopted by Connecticut to that end transgresses the liberty safeguarded by the Constitution.

[4] Reynolds v. United States, 98 U. S. 145; Davis v. Beason, 133 U. S. 333.
[5] Compare Near v. Minnesota, 283 U. S. 697, 713.

The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise.

It will be noted, however, that the Act requires an application to the secretary of the public welfare council of the State; that he is empowered to determine whether the cause is a religious one, and that the issue of a certificate depends upon his affirmative action. If he finds that the cause is not that of religion, to solicit for it becomes a crime. He is not to issue a certificate as a matter of course. His decision to issue or refuse it involves appraisal of facts, the exercise of judgment, and the formation of an opinion. He is authorized to withhold his approval if he determines that the cause is not a religious one. Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment and included in the liberty which is within the protection of the Fourteenth.

The State asserts that if the licensing officer acts arbitrarily, capriciously, or corruptly, his action is subject to judicial correction. Counsel refer to the rule prevailing in Connecticut that the decision of a commission or an administrative official will be reviewed upon a claim that "it works material damage to individual or corporate rights, or invades or threatens such rights, or is so unreasonable as to justify judicial intervention, or is not consonant with justice, or that a legal duty has not been performed."[4] It is suggested that the statute is to be read as requiring the officer to issue a certificate unless the cause in question is clearly not a religious one; and that if he violates his duty his action will be corrected by a court.

To this suggestion there are several sufficient answers. The line between a discretionary and a ministerial act is not always easy to mark and the statute has not been construed by the State court to impose a mere ministerial duty on the secretary of the welfare coun-

[4] Woodmont Assn. v. Milford, 85 Conn. 517, 522; see also Connecticut Co. v. Norwalk, 89 Conn. 528, 531.

cil. Upon his decision as to the nature of the cause, the right to solicit depends. Moreover, the availability of a judicial remedy for abuses in the system of licensing still leaves that system one of previous restraint which, in the field of free speech and press, we have held inadmissible. A statute authorizing previous restraint upon the exercise of the guaranteed freedom by judicial decision after trial is as obnoxious to the Constitution as one providing for like restraint by administrative action.[7]

Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public. Certainly penal laws are available to punish such conduct. Even the exercise of religion may be at some slight inconvenience in order that the state may protect its citizens from injury. Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent.[8] The state is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience. But to condition the solicitation of aid for the perpetuation of religious views or systems upon a license, the grant of which rests in the exercise of a determination by state authority as to what is a religious cause, is to lay a forbidden burden upon the exercise of liberty protected by the Constitution.

Second. We hold that, in the circumstances disclosed, the conviction of Jesse Cantwell on the fifth count must be set aside. Decision as to the lawfulness of the conviction demands the weighing of two conflicting interests. The fundamental law declares the interest of the United States that the free exercise of religion be not prohibited and that freedom to communicate information and opinion be not abridged. The state of Connecticut has an obvious interest in the preservation and protection of peace and good order within her borders. We must determine whether the alleged protection of the State's interest, means to which end would, in the absence of limitation by the federal Constitution, lie wholly

[7] Near v. Minnesota, 283 U. S. 697.

[8] Compare Lewis Publishing Co. v. Morgan, 229 U. S. 288, 306-310; New York ex rel. Bryant v. Zimmerman, 278 U. S. 63, 72.

within the State's discretion, has been pressed, in this instance, to a point where it has come into fatal collision with the overriding interest protected by the federal compact.

Conviction on the fifth count was not pursuant to a statute evincing a legislative judgment that street discussion of religious affairs, because of its tendency to provoke disorder, should be regulated, or a judgment that the playing of a phonograph on the streets should in the interest of comfort or privacy be limited or prevented. Violation of an Act exhibiting such a legislative judgment and narrowly drawn to prevent the supposed evil, would pose a question differing from that we must here answer.[9] Such a declaration of the State's policy would weigh heavily in any challenge of the law as infringing constitutional limitations. Here, however, the judgment is based on a common law concept of the most general and undefined nature. The court below has held that the petitioner's conduct constituted the commission of an offense under the State law, and we accept its decision as binding upon us to that extent.

The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the state to prevent or punish is obvious. Equally obvious is it that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions. Here we have a situation analogous to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application.

Having these considerations in mind, we note that Jesse Cantwell, on April 26, 1938, was upon a public street, where he had a right to be, and where he had a right peacefully to impart his views to

[9] Compare Gitlow v. New York, 268 U. S. 652, 670-1; Thornhill v. Alabama, No. 514 Oct. T. 1939, pp. 6-11.

others. There is no showing that his deportment was noisy, truculent, overbearing or offensive. He requested of two pedestrians permission to play to them a phonograph record. The permission was granted. It is not claimed that he intended to insult or affront the hearers by playing the record. It is plain that he wished only to interest them in his propaganda. The sound of the phonograph is not shown to have disturbed residents of the street, to have drawn a crowd, or to have impeded traffic. Thus far he had invaded no right or interest of the public or of the men accosted.

The record played by Cantwell embodies a general attack on all organized religious systems as instruments of Satan and injurious to man; it then singles out the Roman Catholic Church for strictures couched in terms which naturally would offend not only persons of that persuasion, but all others who respect the honestly held religious faith of their fellows. The hearers were in fact highly offended. One of them said he felt like hitting Cantwell and the other that he was tempted to throw Cantwell off the street. The one who testified he felt like hitting Cantwell said, in answer to the question "Did you do anything else or have any other reaction?" "No, sir, because he said he would take the victrola and he went." The other witness testified that he told Cantwell he had better get off the street before something happened to him and that was the end of the matter as Cantwell picked up his books and walked up the street.

Cantwell's conduct, in the view of the court below, considered apart from the effect of his communication upon his hearers, did not amount to a breach of the peace. One may, however, be guilty of the offense if he commit acts or make statements likely to provoke violence and disturbance of good order, even though no such eventuality be intended. Decisions to this effect are many, but examination discloses that, in practically all, the provocative language which was held to amount to a breach of the peace consisted of profane, indecent, or abusive remarks directed to the person of the hearer. Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument.

We find in the instant case no assault or threatening of bodily harm, no truculent bearing, no intentional discourtesy, no personal

abuse. On the contrary, we find only an effort to persuade a willing listener to buy a book or to contribute money in the interest of what Cantwell, however misguided others may think him, conceived to be true religion.

In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.

The essential characteristic of these liberties is, that under their shield many types of life, character, opinion and belief can develop unmolested and unobstructed. Nowhere is this shield more necessary than in our own country for a people composed of many races and of many creeds. There are limits to the exercise of these liberties. The danger in these times from the coercive activities of those who in the delusion of racial or religious conceit would incite violence and breaches of the peace in order to deprive others of their equal right to the exercise of their liberties, is emphasized by events familiar to all. These and other transgressions of those limits the states appropriately may punish.

Although the contents of the record not unnaturally aroused animosity, we think that, in the absence of a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State, the petitioner's communication, considered in the light of the constitutional guarantees, raised no such clear and present menace to public peace and order as to render him liable to conviction of the common law offense in question.[10]

The judgment affirming the convictions on the third and fifth counts is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

So ordered.

[10] Compare Schenck v. United States, 249 U. S. 47, 52; Herndon v. Lowry, 301 U. S. 242, 256; Thornhill v. Alabama, No. 514, Oct. T. 1939.